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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

KIMBERLY ANN GONZALES,

Defendant and Appellant.

C085710

(Super. Ct. Nos. 11F1909,
14F6834)

Defendant Kimberly Ann Gonzales's sentence includes a three-year enhancement for a prior conviction of transportation of methamphetamine, pursuant to former Health and Safety Code section 11370.2, subdivision (c).¹ (Stats. 1998, ch. 936, § 1, p. 6846.) On appeal, defendant requests we strike this enhancement, arguing that it is no longer valid under the 2017 amendment to that statute; the People agree. We concur and will strike the section 11370.2 enhancement and otherwise affirm the judgment.

¹ Undesignated statutory references are to the Health and Safety Code.

FACTUAL AND PROCEDURAL BACKGROUND

In Shasta County Superior Court case No. 11F1909, defendant pleaded no contest in March 2013 to transportation for sale of methamphetamine (§ 11379, subd. (a)) and resisting, delaying, or obstructing an officer (Pen. Code, § 148, subd. (a)(1)). In October 2013 the trial court suspended imposition of sentence and placed defendant on three years' probation.

In July 2017 a jury found defendant guilty of possession for sale of methamphetamine (§ 11378) in Shasta County Superior Court case No. 14F6834. In bifurcated proceedings, the trial court found true that defendant had a prior conviction for sale or transportation of a controlled substance in violation of section 11379, subdivision (a) (the conviction in case No. 11F1909). The trial court also found defendant in violation of probation in case No. 11F1909.

In August 2017 the court revoked probation in case No. 11F1909 and sentenced defendant to an aggregate term of six years eight months, with two years to be served in county jail and the remaining four years eight months on formal supervision in case Nos. 11F1909 and 14F6834. (Pen. Code, § 1170, subd. (h)(5).) Specifically, the court sentenced defendant as follows: (1) in case No. 11F1909, the midterm of three years for transportation for sale of methamphetamine (§ 11379, subd. (a)), and (2) in case No. 14F6834, eight months for possession for sale of methamphetamine (§ 11378) plus three years consecutive for the narcotics prior (former § 11370.2).

DISCUSSION

In 2017 the Legislature amended section 11370.2, subdivision (c) by eliminating enhancements for prior convictions for violations of section 11379. (Stats. 2017, ch. 677, § 1, eff. Jan. 1, 2018.) In other words, defendant's prior felony conviction for violating section 11379 would no longer support the imposition of the three-year enhancement under section 11370.2, subdivision (c).

As both parties acknowledge, the amendment to section 11370.2 is retroactive and applies to cases like defendant's which are still on appeal and not yet final. (*People v. Millan* (2018) 20 Cal.App.5th 450, 455-456; see also *In re Estrada* (1965) 63 Cal.2d 740, 744.) The appropriate remedy is to strike the enhancement and remand for resentencing. (*Millan*, at p. 456.)

DISPOSITION

The judgment of conviction is affirmed. The section 11370.2 enhancement is struck, and the sentence imposed thereon is vacated. The matter is remanded to the trial court to resentence defendant and prepare an amended corrected abstract of judgment and to forward a certified copy to the Department of Corrections and Rehabilitation.

RAYE, P. J.

We concur:

HOCH, J.

RENNER, J.